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No.		Puducherry	Tuesday	9th	June 2020

பொருளடக்கம்

SOMMAIRES

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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 42/AIL/Lab./T/2020,
Puducherry, dated 17th March 2020)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 11/2019, dated 21-01-2020 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. Puducherry Institute of Medical Sciences, Kalapet, Puducherry and Union Workmen represented by Pudukai Maruthuva Vingana Niruvana Thesia Thozhilalargal Sangam, INTUC-PIMS, Puducherry, over non-payment of bonus for the year 2017-2018 as per the Payment of Bonus Act, 1965 in respect of the matter mentioned in the Annexure to this order;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT PUDUCHERRY**

Present : Thiru V. PANDIARAJ, B.Sc., LL.M.,
Presiding Officer.

Tuesday, the 21st day of January, 2020.

I.D. (T) No. 11/2019

The Secretary,
Pudukai Maruthuva Vingana Niruvana
Thesia Thozhilalargal Sangam INTUC - PIMS,
No. 28, Saint Therese Street,
Puducherry. . . Petitioner

Versus

The Managing Director,
M/s. Puducherry Institute of
Medical Sciences, Kalapet,
Puducherry. . . Respondent

This industrial dispute coming on this day before me for hearing, in presence of Thiru L. Sathish, Counsel for the respondent, on record, the petitioner remained absent, no representation has been made on his behalf, up on perusing the records, this Court passed the following:

AWARD

1. This Industrial Dispute arises out of the reference made by the Government of Puducherry *vide* G.O. Rt. No. 55/AIL/Lab./T/2019, dated 09-04-2019 of the Labour Department, Puducherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(i) Whether the dispute raised by the Union Workmen represented by Pudukai Maruthuva Vingana Niruvana Thesia Thozhilalargal Sangam INTUC-PIMS, Puducherry, against the management of M/s. Puducherry Institute of Medical Sciences, Kalapet, Puducherry, over non-payment of bonus for the year 2017-2018 as per the Payment of Bonus Act, 1965 is justified or not? If justified, what relief the Union Workmen are entitled to?

(ii) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. Today, when the case came up for hearing, the petitioner called absent. No representation. Claim Statement not filed from 06-08-2019 itself. Hence, this reference is dismissed for default. No Cost.

Written and pronounced by me in the open Court on this the 21st day of January, 2020.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 43/AIL/Lab./T/2020,
Puducherry, dated 17th March 2020)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 13/2017, dated 31-01-2020 of the Industrial Tribunal, Puducherry, in respect of the Industrial Dispute between the management of M/s. Mahe Handloom Weavers Co-operative Society Limited, Mahe and Thiru Vadakkan Vijayan (Weavers) and 22 workers as stated in the Annexure, over enhancement of wages has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL AT
PUDUCHERRY**

CAMP COURT SITTING AT MAHE

Present : Thiru V. PANDIARAJ, B.SC., LL.M.,
Presiding Officer.

Friday, the 31st day of January, 2020.

I.D. (T) No. 13/2017

Vadakkan Vijayan (Weavers) and 22 workers,
M/s. Mahe Handloom Weavers
Co-operative Society Ltd.,
No. P.375, P.O. Naluthara, Pallor,
Mahe, Puducherry. . . Petitioner

Versus

1. The General Manager,
M/s. Mahe Handloom Weavers
Co-operative Society Ltd.,
No. P.375, P.O. Naluthara, Pallor,
Mahe, Puducherry.
2. The President,
M/s. Mahe Handloom Weavers
Co-operative Society Ltd.,
No. P.375, P.O. Naluthara, Pallor,
Mahe, Puducherry. . . Respondent

This industrial dispute coming on 03-01-2020 before me for final hearing in the presence of Thiru T. Ashok Kumar, Counsel for the petitioner and Thiruvalargal A.P. Ashokan and D. Soundararajan, Counsel for the respondent, up on hearing, up on perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government of Puducherry as per the G.O. Rt. No. 80/AIL/Lab./T/2017, dated 17-05-2017 for adjudicating the following:

(a) Whether the dispute raised by the 23 workers of Handloom Weavers Co-operative Society, Mahe, against the management of M/s. Handloom Weavers Co-operative Society, Mahe, over enhancement of wages is justified or not? If justified, what relief they are entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. The brief averment of the petition filed by the petitioner:-

(i) The respondent in this dispute is a Co-operative Society engaged in the business of Handloom Weaving. The workman/petitioners involved in this dispute are the employees as weavers in the respondent's establishment. Despite, they have got long and continuous service they were paid very meager and nominal wages which is far below the National Floor Level Wages, which in turn also far below the minimum wages fixed for the handloom industry. The respondent/establishment fixed the wages for each item of piece of goods originally at a very meager and nominal rate. Thereupon, the enhancement of wages was also made at very meager and nominal rate. As per which, the petitioners/workmen were getting ₹ 60 to ₹ 80 per day. The employees employed in various other sections were getting wages in between ₹ 700 to ₹ 900 per day. These petitioners are struggling very hard for their day to day life. They are having the right to claim enhancement of wages from the respondent management. They approached the Regional Administrator and M.L.A. of Mahe, but, it ended in vain. These petitioners filed a complaint before the Assistant Inspector of Labour-cum-Conciliation Officer, Mahe on 22-09-2016. He has made several rounds of conciliation. The respondent management stated that, it is only a Primary Society and the Apex Society is Pontex and it is supplying materials to it for manufacturing handloom goods and that wages were fixed by Pontex and paid by it only. The Conciliation Officer advised the management to take steps to provide wage as ₹ 160 per day to the workmen as an interim measure with effect from 01-07-2005. Then he issued the letter to the Pontex as requested by this management. The Conciliation Officer waited for more than one and half months, but, there was no response from Pontex and hence, he has submitted the failure report to the Government. These petitioners are the employees of the management and the relationship of employer and employee, exists between the management and this petitioners. The management is liable to pay fair and reasonable wages to these petitioners. The Pontex is not Apex Society of this management.

The respondent/management denied the fair wages in an unjustified manner. These petitioners/workmen are entitle for enhanced rate of wages of ₹ 160 per day from 01-07-2003 to 21-09-2016. Further, they are entitled to get the difference of wages for the abovesaid period. These petitioners/workmen are entitle to get a minimum salary of ₹ 500 per day from 22-09-2016 onwards and they are entitled for 10% of enhanced wages every year on the consolidated pay. They are also entitled for difference is wages from 22-09-2016 till the date of Award, hence, this petition has to be allowed.

3. The brief averment of the counter filed by the respondent:-

(i) All the averments and the claim made in the claim statement is denied as false and this respondent is not at all responsible to pay the same as claimed in the claim petition. The respondent Society is having 23 workmen, out of which 13 workers were working as in-shed workers and the remaining workers are working as out-shed workers and they are doing their work from their houses during their free time. The respondent/management is receiving yarn from the Pontex, Puducherry and they are paying prescribed wages to the workers. Originally the workmen worked at their flexible timings and their performance are not equal and the workmen used to weave 3 to 10 pieces of finished goods, like towel, per day. It was very much low than the expected performance of a worker considering the availability of yarn and infrastructure. There is no target fixed for these petitioners and they can do work as per their wishes. The Pontex has paid the wages to these petitioners and this management is not having any control over these petitioners. Further, these petitioners are getting Additional allowances as follows:

- (a) Increase in DA at the rate of 10% every year.
- (b) The in-shed workmen are eligible for ESI facility and out-shed workmen are paid medical allowance @ ₹ 100 p.m.
- (c) Gift coupon of ₹ 1,500 during Pongal festival.
- (d) Free sarees and blouse to female, and dothi and towel to male members.
- (c) Group insurance to a tune of ₹ 60,000 to members.
- (f) Wage incentive @ 30% of wages subject to a ceiling of ₹ 7,500.
- (g) Children Education Allowance from ₹ 400 to ₹ 2,000 per annum from I Std to College level.
- (h) Government contribution to thrift fund @ 12% of their wages.

- (i) Rain season subsidy of ₹ 1,500.
- (j) Superannuation pension of ₹ 2,100 p.m.
- (k) ₹ 10,000 As grant to deceased member from Handloom Weavers Welfare Fund.

(ii) The raw materials and the wages were supplied by the Apex authority of this management namely, Pontex to these petitioners. As this management is doing the job as per the direction of the Pontex it cannot act according to his own decision, hence, the claims cannot be claimed from this respondent, which can be claimed from the Pontex under the control of Government of Puducherry, hence, this petition has been dismissed.

4. No oral evidence and documents were adduced on both sides. Both side Counsels argued their cases as per the plea raised in their statements.

5. Points for consideration:

Whether the dispute raised by the 23 workers of Handloom Weavers Co-operative Society, Mahe, against the management of M/s. Handloom Weavers Co-operative Society, Mahe, over enhancement of wages is justified or not? If justified, what relief they are entitled to? To compute the relief if any, awarded in terms of money if, it can be so computed?

6. On the point:

The petitioner side Counsel argued that these petitioners/workmen were employed under the respondent management and they were paid lesser wages and they were entitled for enhancement of wages and they are coming under the control of the respondent management and therefore, their claim has to be answered in their favour.

7. The respondent side Counsel argued that these petitioners are not coming under the control of the respondent management and they are coming under the control of Pontex, the Apex Society and therefore, the claim cannot stand hold and hence, he prayed to dismiss the claim made by these petitioners.

8. The petitioners have stated that they were employed under the respondent management and they were paid very meager and nominal wages. They have further stated that their salary was very much less than that of the National Floor Level Wages, which in turn far below than that of the minimum wages prescribed under the Minimum Wages Act. Further, they have stated that they were entitle for enhancement of wages and hence, this industrial dispute has to be answered in their favour. In order to prove the pleadings as narrated above in their claim statement, nobody has come forward to adduce evidence in their favour. That is no oral evidence was adduced by these petitioner to

support their claim. Furthermore, no single document was filed to substantiate their claim. Thus, it is found that though they have made claims, they have not come forward to prove their pleadings by evidences and documents. Hence, merely on the basis of their pleading alone, this Court cannot come to the conclusion that they have proved their case. Hence, on the basis of no evidence and no documents, this claim petition found to be fit for dismissal.

9. At this juncture, this Court inclined to mention the judgment rendered by the Hon'ble Supreme Court in 2005 LLR 737.

The abovesaid judgment was rendered by the Bench containing 3 Judges, wherein, it was held that

“pleadings of the parties are no substitute for the proof and when a particular plea is controverted by a party, the other party has to produce the evidence in support of its contention”.

10. Here, in this case, the petitioners failed to come forward to adduce any evidence to substantiate their claim. Furthermore, they have not produce any document to show their employment and receipt of wages. It shows their failure of proving their case *prima facie*. Furthermore, their employment was denied by the respondent management, even after that they have not come forward to adduce evidence. Therefore, this Court was unable to come to the conclusion that the petitioners/workmen proved their case as per the abovesaid judgment.

11. As per the judgment rendered by the Hon'ble High Court of Jharkhand at Ranchi in LP No. 283/2013, two well recognized tests has to be applied to find out the principal employer.

(i) Whether the principal employer pays the salary.

(ii) Whether the principal employer controls and supervise the works of the employees.

12. Here, in this case the respondent has pleaded that Pontex is the Apex authority and they are the primary Society. Further, it has pleaded that the materials and the wages were supplied by the Pontex, Therefore, in order to testify the same both parties have to appear and give evidence on their side *i.e.*, both parties have to produce their documents to substantiate their claims. Then only this Court can apply the abovesaid test and it can find out whether this respondent/management is giving salary or not? and then the respondent is having control over the petitioner/employees. Since, no evidence was adduced on both sides, this Court was unable to apply the abovesaid tests to find out the principal employer. Hence, on that score also this industrial dispute becomes fit for dismissal for lack of evidence.

13. In the result, this industrial dispute is dismissed. No cost.

Dictated to stenographer, transcribed by him, corrected and pronounced, by me in the open Court on this the 31st day of January, 2020.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witnesses: Nil

List of petitioner's exhibits: Nil

List of respondent's witnesses: Nil

List of respondent's exhibits: Nil

ANNEXURE

- | (1) | (2) |
|-----|-----------------|
| 1. | Vijayan |
| 2. | Susila |
| 3. | Shobha |
| 4. | P. Susitra |
| 5. | M. Sasi |
| 6. | Pradeepan |
| 7. | M. Seena |
| 8. | P. Beena |
| 9. | P. Shiyamala |
| 10. | P.D. Chandri |
| 11. | Thondan Chandri |
| 12. | Sadi Paroli |
| 13. | K. Usha |
| 14. | T. Latha |
| 15. | P. Rajeevan |
| 16. | P. Radha |
| 17. | M. Devan |
| 18. | K. Prema |
| 19. | V. Susitra |
| 20. | P.V. Prasita |
| 21. | T. Rajini |
| 22. | C. Sheeba |
| 23. | Pushpavalli |

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.